

Introduced by Senator Cannella

February 17, 2012

An act to amend Section 1203.1m of the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 1124, as introduced, Cannella. Prisons: cost of incarceration: reimbursement.

Existing law authorizes the court in a criminal case to make a determination of a defendant's ability to pay all or a portion of the reasonable costs of imprisonment if the defendant is convicted of an offense and ordered to serve a period of imprisonment in the state prison. Existing law authorizes the court, in its discretion before any hearing, to order the defendant to file a statement setting forth his or her assets, liability, and income under penalty of perjury. If the court determines that the defendant has the ability to pay all or a portion of the costs, existing law requires the court to set the amount to be reimbursed and order the defendant to pay that sum to the Department of Corrections and Rehabilitation in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

This bill would require the court to make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of imprisonment, and would require the court to order the defendant to file a statement setting forth his or her assets, liability, and income before a hearing on the matter.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.1m of the Penal Code is amended to read:

1203.1m. (a) If a defendant is convicted of an offense and ordered to serve a period of imprisonment in the state prison, the court ~~may~~ *shall*, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of the imprisonment. The reasonable costs of imprisonment shall not exceed the amount determined by the ~~Director~~ *Secretary of the Department of Corrections and Rehabilitation* to be the actual average cost of imprisonment in the state prison on a per-day basis.

(b) The court ~~may, in its discretion~~ *shall*, before any hearing, order the defendant to file a statement setting forth his or her assets, liability, and income, under penalty of perjury. At the hearing, the defendant shall have the opportunity to be heard in person or through counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses. A defendant who is represented by counsel appointed by the court in the criminal proceedings shall be entitled to representation at any hearing held pursuant to this section. If the court determines that the defendant has the ability to pay all or a part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the Department of Corrections *and Rehabilitation* for deposit in the General Fund in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(c) At any time during the pendency of an order made under this section, a person against whom the order has been made may petition the court to modify or vacate its previous order on the grounds of a change of circumstances with regard to the person's ability to pay. The court shall advise the person of this right at the time of making the order.

(d) If the amount paid by the defendant for imprisonment exceeds the actual average cost of the term of imprisonment actually served by the defendant, the amount paid by the defendant in excess of the actual average cost shall be returned to the defendant within 60 days of his or her release from the state prison.

1 (e) For the purposes of this section, in determining a defendant's
2 ability to pay, the court shall consider the overall ability of the
3 defendant to reimburse all or a portion of the costs of imprisonment
4 in light of the defendant's present and foreseeable financial
5 obligations, including family support obligations, restitution to the
6 victim, and fines, penalties, and other obligations to the court, all
7 of which shall take precedence over a reimbursement order made
8 pursuant to this section.

9 (f) For the purposes of this section, in determining a defendant's
10 ability to pay, the court shall not consider the following:

11 (1) The personal residence of the defendant, if any, up to a
12 maximum amount of the median home sales price in the county
13 in which the residence is located.

14 (2) The personal motor vehicle of the defendant, if any, up to
15 a maximum amount of ten thousand dollars (\$10,000).

16 (3) Any other assets of the defendant up to a maximum amount
17 of the median annual income in California.